

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID D'AMATO,

CV-06 2429
Plaintiff,

COMPLAINT

-against-

DAVID W. STARR, MAGIC TOUCH PRODUCTIONS,
KENT BARCLAY, GODADDY.COM, INTERCOSMOS
MEDIA GROUP, INC. D/B/A DIRECTNIC.COM,
BLOGSPOT.COM, GOOGLE.COM, BLOGGER.COM,
PYRA.COM, LTD., THEPLANET.COM, and
COMPUTER TYME HOSTING,

Defendants.

FILED
Jury Trial Demanded
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 18 2006 ★

LONG ISLAND OFFICE

SEYBERT, J.
WALL, M.J.

The Plaintiff, David D'Amato ("Plaintiff"), through his attorneys, Leeds, Morelli & Brown, P.C. complaining of the Defendants, David W. Starr, Magic Touch Productions, Kent Barclay, GoDaddy.com, Intercosmos Media Group d/b/a Directnic.com, Blogspot.com, Google.com, Blogger.com, Pyra.Com, Ltd., ThePlanet.com, and Computer Tyme Hosting, respectfully alleges as follows:

INTRODUCTION

1. The jurisdiction of this Court is invoked under 28 U.S.C. §1332 and the doctrine of pendant jurisdiction.
2. Venue is proper pursuant to 28 U.S.C. §1391(a)(2).

PARTIES

3. At all times hereinafter mentioned, the Plaintiff was and still is a resident of the County of Nassau and the State of New York.
4. Upon information and belief, at all times hereinafter mentioned, Defendant David W. Starr was and still is a resident of the State of California.
5. Upon information and belief, Defendant David W. Starr is the registrant and operator of the following websites and blogs:
 - a. www.adultfilmcasting.com,
 - b. www.ticklefilms.com,
 - c. www.ticklishguyscasting.net,
 - d. www.adultfilmcasting.com,
 - e. www.ticklishguyscasting.ctyme.com/,

- f. www.ticklishguyscasting.blogspot.com,
 - g. www.ticklefilms.blogspot.com, and
 - h. www.ticklishguys.blogspot.com.
6. Upon information and belief, Defendant **David W. Starr** has either submitted for posting or personally posted content to the following websites:
- a. www.damonkruezer.net,
 - b. www.kruezeratnight.com, and
 - c. www.ticklingforum.com.
7. Upon information and belief, Defendant **GoDaddy.com** is a corporation organized and in existence pursuant to the laws of the **State** of Arizona, with principle place of business in Scottsdale, Arizona.
8. Upon information and belief, **GoDaddy.com** hosts the following websites:
- a. www.damonkruezer.net,
 - b. www.kruezeratnight.com,
 - c. www.ticklishguyscasting.net, and
 - d. www.ticklefilms.com.
9. Upon information and belief, defendant **Google.com** is a corporation organized and in existence pursuant to the laws of the **State** of California, with principal place of business in Mountain View, California.
10. Upon information and belief, Defendant **Google.com** owns and operates **Blogger.com** and **Blogspot.com**, which are doing business as **Pyra.com, Ltd.**
11. Upon information and belief, Defendants **Blogger.com** and **Blogspot.com** host the following blogs:
- a. www.ticklishguyscasting.blogspot.com,
 - b. www.ticklefilms.blogspot.com, and
 - c. www.ticklishguys.blogspot.com
12. Upon information and belief, Defendant **Magic Touch Productions** is a corporation organized and in existence pursuant to the laws of the State of Nevada with principle place of business in **Las Vegas, Nevada**.
13. Upon information and belief, Defendant **Magic Touch Productions** operates the **The Tickling Media Forum** website, www.ticklingforum.com.
14. Upon information and belief, Defendant **Kent Barclay** was and still is a resident of the Commonwealth of Massachusetts.
15. Upon information and belief, Defendant **Kent Barclay** ("Barclay") is also known as **Damon Kruezer**.

16. Upon information and belief, Barclay **operates** the following websites:
 - a. www.damonkruezer.net and
 - b. www.kruezeratnight.com.
17. Upon information and belief, Defendant **Intercosmos Media Group**, d/b/a Directnic.com (“Intercosmos”), is a **corporation** organized and in existence pursuant to the laws of the State of Louisiana, with principal place of business in New Orleans, Louisiana.
18. Upon information and belief, Defendant **Intercosmos** is the host and registrar of the website www.adultfilmcasting.com.
19. Upon information and belief, Computer **Tyme** Hosting is a corporation organized and in existence pursuant to the laws of the **State** of California, with principal place of business in San Bruno, California.
20. Upon information and belief, Defendant **Computer Tyme** Hosting hosts the website www.ticklishguyscasting.ctyme.com.
21. Upon information and belief, Defendant **ThePlanet.com** is a corporation organized and in existence pursuant to the **law** of the Delaware, with principal place of business in Dallas, Texas.
22. Upon information and belief, Defendant **ThePlanet.com** hosts the website www.ticklingforum.com.

BACKGROUND FACTS

23. Upon information and belief, Defendant **David W. Starr** (“Starr”) has engaged in an ongoing, ever-growing and constantly **changing** pattern of posting, through the Internet, to the general public and to residents of the State of New York, information which is false and/or **damaging to** Plaintiff’s reputation.
24. Starr engages in this conduct by posting **on the** websites and blogs that are registered, hosted, or operated by each **Defendant**.
25. To date, Plaintiff is aware of seven websites **and** three blogs involved in this conduct.
26. However, the content, location, number of **websites** and blogs utilized by Starr and changes on a frequent, if not daily, **basis**.
27. Upon information and belief, the following **websites** and blogs exist or have recently been created:

www.adultfilmcasting.com

28. Upon information and belief, www.adultfilmcasting.com is a website owned operated by Starr, as bears a contact address **which** is the same as Starr's personal contact address.
<http://who.godaddy.com/whois.aspx?domain=adultfilmcasting.com&prog_id=godaddy.>
29. Also, www.adultfilmcasting.com shares **that** contact address with its self-proclaimed "affiliated casting website," www.ticklefilms.com, which site electronically redirects to the web address of www.adultfilmcasting.com/ticklefilms.com/.
30. Moreover, a search of the international WHOIS Database ("WHOIS"), which can be accessed from the website of any Internet domain registrar and which provides the names and contact information of the **hosts**, registrars, registrants, and contact persons for websites, lists Starr as the **Technical** Contact and Administrative Contact, and provides Starr's contact address **for** those contacts and for the website's registrant.
<http://who.godaddy.com/whois.aspx?domain=ticklefilms.com&prog_id=godaddy>
31. Upon information and belief, www.adultfilmcasting.com is a website hosted by Defendant Intercosmos, as a WHOIS search **reveals** Intercosmos to be the registrar of the site and reveals Directnic.com to be the server for the website.
<http://who.godaddy.com/whois.aspx?domain=ticklefilms.com&prog_id=godaddy>
32. Part of www.adultfilmcasting.com is the **webpage**:
<http://www.adultfilmcasting.com/ticklefilms.com/perverted-education.html>.
33. Upon information and belief,
<http://www.adultfilmcasting.com/ticklefilms.com/perverted-education.html> was written and posted by Defendant Starr and **hosted** by Defendant Intercosmos.
<http://who.godaddy.com/whois.aspx?domain=ticklefilms.com&prog_id=godaddy>
34. Intercosmos' Terms of Service state:
You agree to not use the System to:
1. upload, post, email or otherwise transmit **any** Content that is intended or likely to incite or otherwise **promote** imminent conduct that is unlawful, harmful, threatening, **abusive**, harassing, tortious, defamatory, vulgar, obscene, libelous, **invasive** of another's

privacy, hateful, or racially, ethnically or **otherwise** objectionable or likely to produce such conduct; ...

11. collect or store personal data about **other** users without their prior, written and informed consent; ...

13. collect or store personal data about **other** users without their prior, written and informed consent. ...

...

h. Content Submitted.

i. You agree that we and our designees **have** the right to:

1. refuse or move any Content **that** is available through our System and
2. remove any Content that **violates** this Agreement or is otherwise objectionable.

<www.directnic.com/legal/>

35. The entire webpage <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>, is devoted to the schools **at which** Plaintiff has previously been employed and the schools which Plaintiff **has** previously attended.
<<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>
36. The webpage <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> reaches out to the general **public**, but Starr targets former classmates and students of Plaintiff, an **educator**, requesting that they submit "yearbook pictures or comments with **David D'Amato** in them." The webpage <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> also states regarding Plaintiff that, "We also **welcome** a copy of anything that he wrote in your yearbooks."
<<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>
37. The webpage <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> also implores readers to **return** to read stories about Plaintiff, specifically about the "exciting, fascinating **and** sometimes disgusting details of the beginnings of the life of a cyber stalker."
<<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>
38. Upon information and belief, because **almost** all of the schools listed on <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> are located in New York, Defendants Starr **and** Intercosmos are reaching out to

people in New York.

<<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>

39. The webpage <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> also provides a direct link to the website www.ticklishguyscasting.net.
40. However, beyond simply stating the schools Plaintiff attended or at which Plaintiff worked, <http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html> also:
 - a. with deliberate falsehood, thrice calls Plaintiff a “convicted Federal cyber stalker,”
 - b. with deliberate falsehood, twice refers to him as a “pervert,” and
 - c. with deliberate falsehood, once states that it views a particular period in Plaintiff’s educational history with “silent disgust.”<<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>
41. Upon information and belief, the website www.adultfilmcasting.com is reaching out to people in New York by soliciting them be cast in adult films. <<http://www.adultfilmcasting.com>>
42. Specifically, the website www.adultfilmcasting.com asks those who visit it whether they are “willing to travel to Los Angeles, California if we travel for your airfare and hotel?” <<http://www.adultfilmcasting.com>>
43. This question indicates that www.adultfilmcasting.com is not simply targeting people in California, but also targeting people in other states, including New York. <<http://www.adultfilmcasting.com>>
44. Upon information and belief, because Intercosmos hosts www.adultfilmcasting.com, www.adultfilmcasting.com is subject to Intercosmos’ Terms of Service (as referred to in Paragraph 34 above).
45. Upon information and belief, even though Plaintiff noticed Intercosmos of the aforementioned violations of Intercosmos’ Terms of Service (as referred to in Paragraph 34 above), Intercosmos did not take any corrective action to remove this content violative of Intercosmos’ Terms of Service (as referred to in Paragraph 34 above).
46. By not taking corrective action, Intercosmos are thereby condoning Starr’s deliberately false postings.
47. In addition, because Intercosmos has not taken corrective action, Plaintiff has suffered irreparable harm.

www.damonkruezer.net

48. Upon information and belief, www.damonkruezer.net, a website which states that it is a website for “gay entertainment news, **gossip**, and DVD reviews,” is operated by Kent Barclay, who, upon information and belief, uses the pseudonym of Damon Kruezer.
<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>
49. The website www.damonkruezer.net is **currently** down, but it is cached online, and there is no indication that site has been **permanently** disabled.
50. A WHOIS search reveals Barclay to be the **registrant** of www.damonkruezer.net.
<http://who.godaddy.com/whois.aspx?domain=damonkruezer.net&prog_id=godaddy>
51. Upon information and belief, Barclay refers to his alter ego, Damon Kruezer, in the first person, and the website has a link to the email addresses damon-and-s@damonkruezer.net, as well as damon@damonkruezer.net.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
52. Upon information and belief, Defendant GoDaddy.com (“GoDaddy”) is both the registrar and website host of www.damonkruezer.net. A WHOIS search reveals that the website is registered through GoDaddy and that the website www.damonkruezer.net is on GoDaddy’s **web** server, WSC1.JOMAX.NET.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>;
<http://who.godaddy.com/whois.aspx?domain=damonkruezer.net&prog_id=godaddy>
53. The general Terms of Service for GoDaddy.com are:

5. NO UNLAWFUL CONDUCT OR IMPROPER USE.

As a condition of Your use of Go Daddy ’s **Software** and Services, You agree not to use them for any purpose **that** is unlawful or prohibited by these terms and conditions, **and** You agree to comply with any applicable local, state, federal **and** international laws, government rules or requirements. ...

Except as set forth below, Go Daddy may **also** cancel Your use of the Services, after thirty (30) days, if You **are** using the Services in association with spam or morally objectionable activities. Morally objectionable activities will include, but **not be** limited to: activities designed to defame, embarrass, **harm**, abuse, threaten, slander or harass third parties; ... activities **that** are tortuous,

vulgar, obscene, invasive of the privacy of a third party, racially, ethnically, or otherwise objectionable; ...

<https://www.godaddy.com/gdshop/agreements.asp?se=%2B&ci=291>

54. Go Daddy's general Terms of Service also provide that:

Go Daddy reserves the right at all times to **disclose** any information as Go Daddy deems necessary to satisfy any applicable **law**, regulation, legal process or governmental request, or to edit, refuse to **post** or to remove any information or materials, in whole or in part, in Go Daddy's sole discretion.

...

Go Daddy reserves the right to terminate **Services** if Your usage of the Services results in, or is the subject of, legal action **or** threatened legal action, against Go Daddy or any of its affiliates or partners, **without** consideration for whether such legal action or threatened legal action is **eventually** determined to be with or without merit. ...

<https://www.godaddy.com/gdshop/agreements.asp?se=%2B&ci=291>

55. On the website www.damonkruezer.net, **Barclay** states that it has been "accurately" reported that Dext Jones ("**Jones**"), who operates some websites relating to gay pornography and also operates the website www.ticklishguysonline.com, "has been **working** with D'Amato for over a year now." This statement is a deliberate falsehood.
<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>
56. Barclay refers, in www.damonkruezer.net, to a newsletter by Starr, which is, in part, "concerning ... the 'Tickle Lady' D'Amato."
<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>
57. Barclay also presents, in www.damonkruezer.net, what he states is a quote that is "unedited, unchanged and exactly as written by DAVID STARR."
<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>
58. In that quote on www.damonkruezer.net, **Starr** states that Plaintiff is a "liar" and that Jones is a "**Borg**" who receives "thought infusion[s]" from Plaintiff and whose "opinion has become D'Amato's."
<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>

59. Starr also suggests that Jones should “distance himself from, ‘the tickle people,’ AKA David D'Amato, who called himself a **girl** named Tracy ...” This statement is a deliberate falsehood.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
60. At the end of that quote, Starr and Barclay **have** placed a link to Starr’s blog regarding Plaintiff: www.ticklishguyscasting.blogspot.com, now also found at www.ticklishguyscasting.ctyme.com/.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
61. Elsewhere in www.damonkruezer.net, Barclay posts, under the heading “Ticklish Guys Casting: The Power of the Sword of Truth,” the following deliberately false quote from Starr:

‘He is doing everything that he can in order to get the domain TicklishGuysCasting.net cancelled. Isn't it **really** amazing that he should know that this is a perfect example of the pot calling the kettle black?’ - DAVID STARR

<http://ticklishguyscasting.blogspot.com/> for the entire fascinating expose'

<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
62. Although that quote does not refer explicitly to Plaintiff, it is clear that the quote refers to Plaintiff, since both websites referred to by Starr and posted by Barclay are or bounce to the Starr’s blog about the Plaintiff, located at <http://ticklishguyscasting.ctyme.com/blog.html>.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
63. Upon information and belief, the website www.damonkruezer.net is reaching out to people in New York by speaking on a **matter** (gay pornography) that interests individuals throughout the United States, **including** New York.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>
64. Moreover, by posting regarding Plaintiff, **who** is probably best known to people in New York, Barclay and Starr are using www.damonkruezer.net to reach people in New York.
<<http://72.14.207.104/search?q=cache:DdDF0Fab7kJ:damonkruezer.net/+&hl=en&lr=&strip=1>>

65. Upon information and belief, because GoDaddy.com is the registrar and website hosting provider of www.damonkruezer.net, www.damonkruezer.net is subject to GoDaddy.com's Terms of Service (as referred to Paragraphs 53 and 54 above).
66. Upon information and belief, even though Plaintiff noticed Barclay and GoDaddy of the aforementioned violations of GoDaddy's Terms of Service (as referred to Paragraphs 53 and 54 above), GoDaddy and Barclay did not take any corrective action to remove this content violative of GoDaddy's Terms of Service (as referred to Paragraphs 53 and 54 above).
67. By not taking corrective action, GoDaddy and Barclay thereby are condoning Starr's deliberately false postings.
68. In addition, because neither GoDaddy nor Barclay has taken corrective action, Plaintiff has suffered irreparable harm.

www.kruezeratnight.com

69. Upon information and belief, www.kruezeratnight.com, a website which contains a link to www.damonkruezer.net and to which www.damonkruezer.net contains a link, is operated by Barclay, also using the pseudonym of Damon Kruezer.
<<http://www.kruezeratnight.com>>
70. A WHOIS search reveals Barclay to be the registrant, administrative contact, and technical contact of www.damonkruezer.net.
<http://who.godaddy.com/whois.aspx?domain=kruezeratnight.com&prog_id=godaddy>
71. In the website, Barclay refers to his alter ego, Damon Kruezer, in the first person, and the website has a link to an email address of damon@kruezeratnight.com.
<<http://www.kruezeratnight.com>>
72. Upon information and belief, Defendant GoDaddy.com ("GoDaddy") is both the registrar and website hosting provider of www.kruezeratnight.com, as revealed by a WHOIS database search.
<http://who.godaddy.com/whois.aspx?domain=kruezeratnight.com&prog_id=godaddy>
73. Under the headline "Another Starr Victory for the 1st Amendment and Justice," Barclay posts another quote from Starr:

We have won our first 'legal arena' battle against D'Amato and his cronies. Yesterday the D'Amato team of legal eagles served our provider a notice to remove certain content and they complied. The glorious legal eagle of the Alliance rose up and defended the

provider's rights under the 1st Amendment to publish known facts about the federally convicted D'Amato, thus validating The Alliance as a credible news outlet.

The Alliance was victorious ... again. In less than 18 hours the people's right to know was completely restored with [sic] apologies. There is one fact that is quite common in the D'Amato camp -- they tend to choose the losing side.

<<http://www.kruezeratnight.com>>

74. Upon information and belief, the website www.kruezeratnight.com is reaching out to people in New York by speaking on a matter (gay pornography) that interests individuals throughout the United States, including New York. <<http://www.kruezeratnight.com>>
75. Moreover, by posting regarding Plaintiff, who is probably best known to people in New York, Barclay and Starr are using www.kruezeratnight.com to reach people in New York. <<http://www.kruezeratnight.com>>
76. Upon information and belief, because GoDaddy.com is the registrar and website hosting provider of www.kruezeratnight.com, www.kruezeratnight.com is subject to GoDaddy.com's Terms of Service (as referred to Paragraphs 49 and 50 above).
77. Upon information and belief, even though Plaintiff noticed Barclay and GoDaddy of the aforementioned violations of GoDaddy's Terms of Service (as referred to Paragraphs 53 and 54 above), GoDaddy and Barclay did not take any corrective action to remove this content violative of GoDaddy's Terms of Service (as referred to Paragraphs 53 and 54 above).
78. By not taking corrective action, GoDaddy and Barclay thereby are condoning Starr's deliberately false postings.
79. In addition, because neither GoDaddy nor Barclay has taken corrective action, Plaintiff has suffered irreparable harm.

www.ticklefilms.com

80. Upon information and belief, Starr operates this website, as he is listed as the registrant of the site on WHOIS. <http://who.godaddy.com/whois.aspx?domain=ticklefilms.com&prog_id=godaddy>
81. Upon information and belief, GoDaddy is both the registrar and website hosting provider of www.ticklefilms.com, as revealed by a WHOIS search. <http://who.godaddy.com/whois.aspx?domain=ticklefilms.com&prog_id=godaddy>

82. The website www.ticklefilms.com bounces directly to http://www.adultfilmcasting.com/ticklefilms.com/, one of the other websites complained of by Plaintiff herein. <www.ticklefilms.com>
83. Upon information and belief, the website www.ticklefilms.com is reaching out to people in New York by soliciting them be cast in adult films. <http://www.adultfilmcasting.com/ticklefilms.com/>
84. Specifically, the website www.ticklefilms.com asks its visitors whether they are “willing to travel to Los Angeles, California if we pay for your airfare and hotel?” <http://www.adultfilmcasting.com>
85. This question indicates that www.ticklefilms.com is not simply targeting people in California, but is also targeting people in other states, including New York. <http://www.adultfilmcasting.com/ticklefilms.com/>
86. Upon information and belief, because GoDaddy.com is the registrar and website hosting provider of www.ticklefilms.com, www.ticklefilms.com is subject to GoDaddy.com’s Terms of Service (as referred to Paragraphs 53 and 54 above).
87. Upon information and belief, even though Plaintiff noticed GoDaddy of the aforementioned violations of GoDaddy’s Terms of Service (as referred to Paragraphs 53 and 54 above), GoDaddy did not take any corrective action to remove this content violative of GoDaddy’s Terms of Service (as referred to Paragraphs 53 and 54 above).
88. By not taking corrective action, GoDaddy is thereby condoning Starr’s deliberately false postings.
89. In addition, because GoDaddy has not taken any corrective action, Plaintiff has suffered irreparable harm.

www.ticklingforum.com

90. Upon information and belief, Defendant Magic Touch Productions (“Magic Touch”) operates www.ticklingforum.com (known as The Tickling Media Forum) as Magic Touch is listed, on WHOIS, as the Administrative Contact and “Organization” for the website. <http://who.godaddy.com/whois.aspx?domain=ticklingforum.com&prog_id=godaddy>
91. Upon information and belief, Defendant ThePlanet.com (“ThePlanet”) hosts the website www.ticklingforum.com, as WHOIS lists ThePlanet as the registrar for www.ticklingforum.com and ThePlanet’s servers are listed, on WHOIS, as the

servers for www.ticklingforum.com.

http://who.godaddy.com/whois.aspx?domain=ticklingforum.com&prog_id=godaddy

92. The general Terms of Service for ThePlanet.com are:

Acceptable Use Policy [later abbreviated AUP].

...

Prohibited Content

Customers shall not allow the posting, transmission, or storage of data and content on or through the Services which ... constitutes a violation of any relevant law, regulation, ordinance, or court order.

...

Violations of AUP

The Planet may enforce this AUP with or without notice to a Customer by any actions it deems necessary in its sole discretion, including the following:

- Disabling access to a Customer's content that violates this AUP
- Removal of DNS records from Servers
- Blocking mail or any other network service
- Effecting IP address null routing
- Suspending or terminating of a Customer's service
- Taking direct action against a Customer's users and customers.

The aforementioned list of actions shall not be construed in any way to limit the actions or remedies that The Planet may take to enforce and ensure compliance with this AUP. ...

The Planet reserves the right at all times to investigate any actual, suspected, or alleged violations of this AUP, with such investigation to include accessing of data and records on, or associated with, any Server.

<http://www.theplanet.com/legal/index.html>

93. The website www.ticklingforum.com has a threaded format, in which users can post comments and reply to the comments posted by other users.
http://who.godaddy.com/whois.aspx?domain=ticklingforum.com&prog_id=godaddy

94. A search on www.ticklingforum.com indicates that Starr posted to www.ticklingforum.com no less than **twenty times** between January 20, 2004 and April 28, 2006. <<http://www.ticklingforum.com/search.php>>
95. Of the twenty distinct posts found by Plaintiff on www.ticklingforum.com, thirteen posts speak about Plaintiff by his **legal** name or by the names, Terri Tickle or Terri DiSisto, which Plaintiff **allegedly** formerly utilized. These posts are deliberate falsehoods. <<http://www.ticklingforum.com/search.php>>
96. Some of the posts regarding Plaintiff **attribute** ownership of numerous domains, such as www.ticklishguyscasting.com and www.ticklishguysonline.com, to Plaintiff's registry, ownership, and control. These posts are deliberate falsehoods. <<http://www.ticklingforum.com/search.php>>
97. Of these postings regarding Plaintiff, each **was** viewed countless times, with a minimum of at least 320 viewers and a **maximum** of at least 2,720 viewers per post. <<http://www.ticklingforum.com/search.php>>
98. Among the posts by Starr is one entitled, "**He** is at it again," in which Starr writes "Hello, David D'Amato is back at it again... **read** the expose' at <http://www.ticklishguyscasting.net> --- **many** pages of new stuff this prick is doing." These statements are deliberate falsehoods. <<http://www.ticklingforum.com/search.php>>
99. Also among the posts by Starr is a post in **which** Starr calls Plaintiff "cyber stalker David D'Amato." These statements **are** deliberate falsehoods. <<http://www.ticklingforum.com/search.php>>
100. In another post, Starr feeds into another **poster's** expressed (but unfounded) anxiety about Plaintiff by posting, "Please **come** to the <http://www.ticklishguyscasting.net> and **leave** us your story. We may run a special issue on it, or include it in an upcoming **Alliance** News release." <<http://www.ticklingforum.com/search.php>>
101. Starr's other posts on www.ticklingforum.com, too numerous to detail in this Complaint, are similar in substance and **tone** and are deliberate falsehoods. <<http://www.ticklingforum.com/search.php>>
102. Upon information and belief, www.ticklingforum.com has reached out to individuals in New York, by providing a **forum** for threaded posting and internet chat, including to users of www.ticklingforum.com in New York.
103. Because ThePlanet.com is the registrar and website hosting provider of www.tickleforum.com, www.tickleforum.com is subject to The Planet.com Terms of Service (as referred to in Paragraph 92 **above**).

104. Upon information and belief, even though **Plaintiff** noticed ThePlanet of the aforementioned violations of ThePlanet's **Terms** of Service (as referred to in Paragraph 92 above), ThePlanet did not **take any** corrective action to remove this content violative of ThePlanet's **Terms of Service** (as referred to in Paragraph 92 above).
105. By not taking corrective action, ThePlanet is **thereby** condoning Starr's deliberately false postings.
106. In addition, because ThePlanet has not **taken** corrective action, Plaintiff has suffered irreparable harm.

**www.ticklishguyscasting.blogspot.com, www.ticklefilms.blogspot.com, and
www.ticklishguys.blogspot.com**

107. Upon information and belief, www.ticklishguyscasting.blogspot.com, entitled "Ticklish Guys Online – An Expose' on David D'Amato, AKA 'Terri Disisto' The Tickle Lady" is operated by Starr, as **he** states, in the text of www.ticklishguyscasting.blogspot.com, that **he** is "the creator and administrator of this website." <<http://ticklishguyscasting.ctyme.com/blog.html>>
108. Blogger.com's Terms of Service state: "**Member** agrees not to transmit through the Service any unlawful, harassing, libelous, abusive, threatening, or harmful material of any kind or nature." <<http://www.blogger.com/terms.g>>
109. Blogspot.com's Terms of Service state: "**MEMBER CONDUCT ...**

You agree to not use the Service to: (a) **upload**, post or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, **invasive** of another's privacy, hateful, or racially, ethnically or otherwise objectionable ..."
<<http://www.blogger.com/terms.g>>
110. In addition, Blogspot.com's Terms of Service state:

You acknowledge ... that Pyra and its **designees** shall have the right ... in their sole discretion to refuse or remove any **Content** that is available via the Service. Without limiting the foregoing, Pyra and its **designees** shall have the right to remove any Content that violates the TOS **or is** otherwise objectionable. You agree that you must evaluate, and bear all **risks** associated with, the use of any Content, including any reliance on the **accuracy**, completeness, or usefulness of such Content.
<<http://www.blogger.com/terms.g>>

111. When one clicks on the link in www.ticklishguyscasting.blogspot.com ("Casting Blog") to "View My Complete Profile," one is taken to a webpage with the heading "David90212." <<http://www.blogger.com/profile/16799304>>
112. Upon information and belief, "David90212" is composed of Starr's first name and mailing address zip code.
<http://who.godaddy.com/whois.aspx?domain=adultfilmcasting.com&prog_id=godaddy>
113. Upon information and belief, "David90212" is Starr's user identification for Blogger.com and Blogspot.com.
114. The webpage with the heading "David90212" (referenced in Paragraph 111 above) contains the names of the Casting Blog and of two other blogs, www.ticklefilms.blogspot.com ("Film Blog") and www.ticklishguys.blogspot.com ("Guys Blog").
<<http://www.blogger.com/profile/16799304>>
115. Upon information and belief, all three blogs are hosted by Blogspot.com, as all three blogs contain Blogspot.com's internet address format, [www.\[name of blog\].blogspot.com](http://www.blogspot.com). <<http://www.blogger.com/profile/16799304>>
116. All three blogs now re-direct to <http://ticklishguyscasting.ctyme.com/index.html>, which contains content regarding Plaintiff and a link to <http://ticklishguyscasting.ctyme.com/blog.html>, the new location for the Casting Blog. <<http://www.ticklefilms.blogspot.com>>;
<<http://www.ticklishguys.blogspot.com>>;
<<http://www.ticklishguyscasting.blogspot.com>>;
<<http://ticklishguyscasting.ctyme.com/index.html>>
117. The Guys Blog has contained postings by "David90212" and a link to the Casting Blog. <<http://www.ticklishguys.blogspot.com>>
118. The Guys Blog has contained a comment in response to a posting by "David90212," which comment has an "anonymous" author but was "Cleared for immediate publication by David Starr of TickleFilms (comments invited at davidstarr@ticklefilms.com)." <<http://www.ticklishguys.blogspot.com>>;
119. That comment posted on the Guys Blog includes, but is not limited to, the following deliberately false statements about Plaintiff:
 - a. that some websites, "through their owner David P. D'Amato have publicly stated that they will steal footage and put up footage that the model expressly does not want to appear"
 - b. that a specific kind of "abuse is well established as one of David P. D'Amato's favorites";

- c. that now "D'Amato decides to pirate **anything** and everything he could get his filthy hands on";
 - d. that "I think that D'Amato has some **serious** mental health issues...."; and asking
 - e. "Would you want this Fat Fuck D'Amato **giving** advice to any of your children, or your friend's kids? I think not";
- <<http://www.ticklishguys.blogspot.com>>

120. The Films Blog had contained postings by "**David90212**" and a link to the e-mail address fraud@ticklefilms.com, an email **address** at www.ticklefilms.com, which, upon information and belief, is operated by **Starr**.
<<http://www.ticklefilms.blogspot.com>>

121. The Films Blog has falsely stated that, "**The name** TickleFilms.NET has been illegally registered by well known tickle **person** David P. D'Amato ..., a guy who pretends to be a female in order to lure **guys** into vulnerable situations. Guys have been hurt." <<http://www.ticklefilms.blogspot.com>>

122. The Casting Blog has contained the largest **amount** of deliberately false material directed at Plaintiff. Included on that blog **are** the following:

- a. Fictional "articles" and a newsletter about **Plaintiff** and about issues and people Starr believes to be involved with Plaintiff
- b. A song, "dedicated to David D'Amato," **regarding** a man who wishes to be a woman, set to the tune of a song from *The Wizard of Oz*
- c. A photograph of the woman Plaintiff **allegedly** impersonated, with the caption, "This is the woman that David D'Amato **was** pretending to be while cyber stalking his victims," and, next to that **photograph**, a low-quality photograph of Plaintiff, followed by the quote, "...and this is what he really looks like."
- d. A section for "Feedback and Frequently **Asked Questions**."
- e. A set of eight distinct e-mail addresses, **all** ending in "@ticklishguyscasting.net," through which **readers** can allegedly report information to Starr about Plaintiff.
- f. Under the heading "The Multiple **Personalities** of David D'Amato," a list of names and website addresses which Starr **improperly** believes are utilized by Plaintiff.

1. That list contains the following **commentaries**:

- (a) "It is clear that David D'Amato is not happy with himself, so he decided that he would like to **impersonate** many other people instead... We have provided **some** of the many emails that David D'Amato can be reached at, **and** the associated name if we have it."
- (b) "David D'Amato also **likes** to create sites using other people's [sic] names and companies... **several** of them are identified below. Please note that not one of **the** below sites are authorized by the people victimized, but provided only to show the obsession of David D'Amato with other **people** and companies that are not his."

(c) "Due to the absolute **failure** of David D'Amato to build a credible reputation in the **tickling** world, he tries to ride off other people's [sic], his favorite **being** the well-established company TickleFilm's, who refused to **work** with him anymore in 2005 -- the proof is in the whois of the below domains by observing the created on dates... TickleFilms has been around since 1998, nd [sic] all the others below **havebeen** [sic] created 2005 and after..."

(d) "Most of the sites are **stupid** and are provided here to show the depth David D'Amato will **sink** to, and as a warning to prospective models who would otherwise **work** with him, by providing them a glance into their future."

2. That list includes the following **websites**, all of which Starr alleges are "[k]nown sites that David D'Amato **uses** to lure victims into his snare: ..., but none of which are actually **operated** by or any manner owned or controlled by Plaintiff:

- (a) ticklishguysonline.com
- (b) ticklishguysonline.nl
- (c) ticklishguyscasting.com
- (d) ticklefilmscasting.com

g. Articles on cyber stalking

h. A link to an Internet article, where the **link** from the Casting Blog asks "Does D'Amato qualify as a f*ckhead?"

i. A link to Plaintiff's alleged MySpace.com **profile**, headed by the words, "David D'Amato Appoints Himself as an Assistance District Attorney for New York City."

j. Various government and court documents **relating** to Plaintiff's criminal misdemeanor case, unredacted.

k. Articles on that criminal misdemeanor **case**.

l. Alleged articles about alleged victims or **alleged** potential victims of Plaintiff.

m. Alleged articles about Plaintiff's alleged **impersonation** of Ms. DiSisto.

n. Introductory headlines referring to Plaintiff as a "cyber stalker" twice and once as "much hated federal convicted stalker **David D'Amato**," even though Plaintiff was not investigated for, charged with, or **convicted** of stalking of any kind.

o. A link to a listing of the schools where Plaintiff attended or worked, much like the aforementioned list (in Paragraph 35 **above**), except containing, upon information and belief, a photograph of Plaintiff from the West Hempstead High School yearbook, posted without Plaintiff's **written** consent and located at <http://www.ticklishguyscasting.net/perverted-education.html>.

p. A headline above all of the **mentioned** sections which states, "Links about David D'Amato... The most famous CyberStalker in Internet History."

p. A banner promising more, similar items **in the** future.

q. A scrolling banner which reads, "David **D'Amato** used a high powered New York attorney to try to close down parts of **this** site. He experienced utter failure and got to pay a nice hefty legal fee for **nothing**! The site and its contents are still

here and will remain here for your viewing **pleasure** and education. Thank you 1st Amendment and United States District Court of Boston, Massachusetts!!”

r. A solicitation to readers for internet **banners**, stating: “We have received many, many request to link to us and we need a **banner** for the sites to place in their links list. We will need a few of them of various **sizes**. Please create and send to SUBMISSIONS. The sooner banners start **coming** in, the sooner the word about D’Amato and his cyberstalking gets out **further**. Thank you!”

<<http://www.ticklishguyscasting.blogspot.com>>;

<<http://ticklishguyscasting.ctyme.com/index.html>>

123. The Films Blog and the Guys Blog have **been** removed, and navigation to those blog now takes an internet user to www.ticklishguyscasting.net, as described in Paragraphs 137 through 148 below. <<http://www.ticklefilms.blogspot.com>>; <<http://www.ticklishguys.blogspot.com>>; <<http://www.adultfilmcasting.com/ticklefilms.com//perverted-education.html>>; >
124. Upon information and belief, all three **blogs** **are** engaging with individuals in New York by asking for their feedback, especially from those who know Plaintiff or are interested in the Plaintiff’s alleged **missteps**. <<http://www.ticklefilms.blogspot.com>>; <<http://www.ticklishguys.blogspot.com>>; <<http://www.ticklishguyscasting.blogspot.com>>; <<http://ticklishguyscasting.ctyme.com/index.html>>
125. This relationship with New York is especially strong in the Casting Blog, wherein the Casting Blog states, as a non-exclusive **example**:
 - a. “We will allow postings, but not from **the unidentified**. Register, and your comments will be published ...”
 - b. “Please create and send to SUBMISSIONS. The sooner banners start coming in, the sooner the word about D’Amato and **his** cyberstalking gets out **further**.”
 - c. “FAQ about David D’Amato. Last updated 4/18/2006, version 1.0 ... Click here to submit a new FAQ. ... Click here to send feedback or tell us what you would like to see on the website - this address may be used to submit David D’Amato documents you may have that you would like to see online. <<http://www.ticklefilms.blogspot.com>>; <<http://www.ticklishguys.blogspot.com>>; <<http://www.ticklishguyscasting.blogspot.com>>; <<http://ticklishguyscasting.ctyme.com/index.html>>
126. Upon information and belief, even though **Plaintiff** noticed Blogger.com and Blogspot.com of the aforementioned **violations** of the Blogger.com and Blogspot.com Terms of Service (as referenced in Paragraphs 108 through 110 above), neither Pyra.com, Ltd., nor **Blogger.com**, nor Blogspot.com took any corrective action to remove the content **violative** of the Blogger.com and Blogspot.com Terms of Service (as referenced in Paragraphs 108 through 110

above).

127. By not taking corrective action, Blogger.com, Blogspot.com, and Pyra.com, Ltd. are thereby condoning Starr's deliberately **false** postings.
128. In addition, because neither Blogger.com, nor Blogspot.com, nor Pyra.com, Ltd. has taken correction action, Plaintiff has **suffered** irreparable harm.

www.ticklishguyscasting.ctyme.com

129. Upon information and belief, Starr operates www.ticklishguyscasting.ctyme.com, as the website's address, which includes the **phrase** "ticklishguyscasting," is similar to other websites operated by Starr, including www.ticklishguyscasting.blogspot.com and www.ticklishguyscasting.net.
<http://www.ticklishguyscasting.ctyme.com>
130. Moreover, the postings on www.ticklishguyscasting.ctyme.com were made within days of Plaintiff's demand for Starr to terminate any such postings on other websites.
131. Upon information and belief, www.ticklishguyscasting.ctyme.com is hosted by Defendant Computer Tyme Hosting ("Computer Tyme"), as the website bears Computer Tyme's website name, www.ctyme.com.
132. The website www.ticklishguyscasting.ctyme.com now hosts the aforementioned Casting Blog at http://ticklishguyscasting.ctyme.com/blog.html.
<http://ticklishguyscasting.ctyme.com/blog.html>
133. The website www.ticklishguyscasting.ctyme.com also contains the following links to the following unredacted documents:
 - a. To the Information in Plaintiff's criminal **misdemeanor** case:
http://ticklishguyscasting.ctyme.com/damato-complaint.pdf
 - b. To the Judgment in Plaintiff's criminal **misdemeanor** case:
http://ticklishguyscasting.ctyme.com/damato-judgment.pdf
 - c. To the PACER Case Summary in Plaintiff's criminal misdemeanor case:
http://ticklishguyscasting.ctyme.com/damato-case-history.htm
 - d. To the Judicial Recommendation in Plaintiff's criminal misdemeanor case:
http://ticklishguyscasting.ctyme.com/damato-judicial-recommendation.pdf<http://ticklishguyscasting.ctyme.com>.
134. Upon information and belief, the Casting **Blog**, which www.ticklishguyscasting.ctyme.com now **hosts**, is engaging with individuals in New York by asking for their feedback, **especially** from those who know Plaintiff or are interested in the Plaintiff's alleged **missteps**, as further detailed in Paragraphs 122, 124, and 125 above.

[<http://ticklishguyscasting.ctyme.com/blog.html>](http://ticklishguyscasting.ctyme.com/blog.html)

135. Upon information and belief, Computer Tyme does not have a traditional Terms of Service provision which governs user **conduct** to any significant extent.

[<http://www.ctyme.com/hosting/index.htm>](http://www.ctyme.com/hosting/index.htm)

136. Computer Tyme states does not so limit the **contents** of the websites it hosts because:

We are very strong supporters of free speech and free expression and resist any attempts of governments to **impose** limits on what can be said on the web. Therefore, we allow **content** that many of the larger hosting companies might not. ... **But** we believe strongly that the web belongs to the people of the **world**, and that it transcends governmental control.

[<http://www.ctyme.com/hosting/index.htm>](http://www.ctyme.com/hosting/index.htm)

www.ticklishguyscasting.net

137. Upon information and belief, Starr operates www.ticklishguyscasting.net, as he is listed, on WHOIS, as the registrant for the **website**.

[<http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy>](http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy)

138. Upon information and belief, GoDaddy is **the** registrar of www.ticklishguyscasting.net, according to **WHOIS**.

[<http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy>](http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy)

139. Upon information and belief, Defendant **Computer** Tyme is the website hosting provider for www.ticklishguyscasting.net, as Computer Tyme's servers are listed, in WHOIS, as the server for www.ticklishguyscasting.net.

[<http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy>](http://who.godaddy.com/whois.aspx?domain=ticklishguyscasting.net&prog_id=godaddy)

140. The website www.ticklishguyscasting.net **contains** a low-quality photograph of Plaintiff, and text, including the following **words** (which are also displayed in the Casting Blog):

David D'Amato used a high powered New York attorney to try to close down parts of this site. He experienced utter failure and got to pay a nice hefty legal fee for nothing! **The** site and its contents are still here and will remain here for your **viewing** pleasure and education. The documents he wanted **supressed** [sic] included the actual court's conviction and sentencing **document** - be sure to visit

those documents in the court documents **section** on the website. ...
<<http://www.ticklishguyscasting.net>>

141. The website www.ticklishguyscasting.net **also** contains the headline, "The Sound of David P. D'Amato when he is reading **the latest** edition of [Starr's "newsletter"] the Alliance," followed by an **audio** clip of a baby crying.
<<http://www.ticklishguyscasting.net>>
142. At the bottom of the website www.ticklishguyscasting.net is the text, "When you are done laughing, click here to continue...." The word "here" is a hyperlink.
<<http://www.ticklishguyscasting.net>>
143. By clicking on that hyperlink, one is directed to the web address of <http://ticklishguyscasting.ctyme.com/blog.html>, the aforementioned Casting Blog.
<<http://www.ticklishguyscasting.net>>;
<<http://ticklishguyscasting.ctyme.com/blog.html>>
144. Upon information and belief, www.ticklishguyscasting.net is reaching out to individuals in New York by pulling in those in New York who know, know of, or are interested in Plaintiff with the one page www.ticklishguyscasting.net website and the direct link from that site to the Casting Blog, which also reaches out to individuals in New York, as described in Paragraphs 122, 124, and 125 above.
<<http://www.ticklishguyscasting.net>>;
<<http://ticklishguyscasting.ctyme.com/blog.html>>
145. Upon information and belief, because GoDaddy.com is the registrar of www.ticklishguyscasting.net, www.ticklishguyscasting.net is subject to GoDaddy.com's Terms of Service.
146. Upon information and belief, even though Plaintiff noticed GoDaddy of the aforementioned violations of GoDaddy's **Terms** of Service (as referred to Paragraphs 53 and 54 above), GoDaddy **did not** take any corrective action to remove this content violative of GoDaddy's **Terms** of Service (as referred to Paragraphs 53 and 54 above).
147. By not taking corrective action, GoDaddy is **thereby** condoning Starr's deliberately false postings.
148. In addition, because GoDaddy has not **taken** corrective action, Plaintiff has suffered irreparable harm.

FIRST CAUSE OF ACTION: AGAINST DEFENDANT DAVID W. STARR

149. Plaintiff incorporates by reference, as if **fully** stated herein, all allegations contained in Paragraphs 4-6, 23-24, 26, 28, **30**, 33, 36, 38, 46, 56-64, 67, 73, 75,

78, 80, 88, 94, 98-101, 105, 107, 112-113, 118, 120, 122, 127, 129-130, 137, 141, and 147 above.

150. The statements published by Defendant Starr to the general public on the Internet are false, defamatory in nature, and pertain to Plaintiff.
151. By reason of the words so published, Plaintiff has been injured in his good name and reputation, has suffered ridicule and contempt, and has been damaged in an amount not less than \$5,000,000.

SECOND CAUSE OF ACTION: AGAINST DEFENDANT KENT BARCLAY

152. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in Paragraph 55 above.
153. The statements, as alleged in Paragraph 55 above, published by Defendant Barclay to the general public on the Internet are false, defamatory in nature, and pertain to Plaintiff.
154. By reason of the words so published, Plaintiff has been injured in his good name and reputation, has suffered ridicule and contempt, and has been damaged in an amount not less than \$5,000,000.

THIRD CAUSE OF ACTION: AGAINST DEFENDANT DAVID W. STARR

155. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
156. The publication of the aforementioned statements by Defendant Starr was extreme and outrageous and was done with the intent of causing Plaintiff severe emotional distress, did cause Plaintiff to suffer severe emotional distress, and was the direct and proximate cause of the severe emotional distress and other harm suffered by the Plaintiff.
157. By reason of the words so published, Plaintiff has suffered severe emotional distress and has damaged Plaintiff in an amount not less than \$5,000,000.

FOURTH CAUSE OF ACTION: AGAINST DEFENDANT DAVID W. STARR

158. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
159. Defendant David W. Starr, without Plaintiff's written consent, photographs of Plaintiff, as alleged in Paragraphs 122(c), 122(o), and 140 above, to post to the

internet, including to those accessing the Internet within New York, for advertising purposes and for the purposes of trade.

160. Specifically, Defendant David W. Starr, without Plaintiff's written consent, utilized photographs of Plaintiff, as alleged in Paragraphs 122(c), 122(o), and 140 above, to promote his websites, including the aforementioned website, and to generate revenue for his "Adult Casting" business.
161. By and through the unauthorized use of Plaintiff's photograph for advertising purposes, Defendant David W. Starr has violated New York Civil Rights Law §51.
162. By reason of such unauthorized and unlawful use, Plaintiff has suffered irreparable harm and has been damaged in an amount not less than \$5,000,000.

**FIFTH CAUSE OF ACTION: AGAINST MAGIC TOUCH PRODUCTIONS,
KENT BARCLAY, GODADDY.COM, INTERCOSMOS
MEDIA GROUP, INC. D/B/A DIRECTNIC.COM,
BLOGSPOT.COM, BLOGGER.COM, PYRA.COM, LTD, GOOGLE.COM,
THEPLANET.COM, and COMPUTER TYME HOSTING**

163. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
164. In the weeks prior to the filing of this Complaint, Plaintiff informed the above-named Defendants of the falsity of the statements published by Defendant David W. Starr, but the above-named Defendants refused to remove the aforementioned false statements, which statements violated the Terms of Service of the above-named Defendants.
165. By reason Defendants' failure to remove those false statements published by Defendant David W. Starr, Plaintiff continues to suffer irreparable harm for which there is no adequate remedy at law.

**SIXTH CAUSE OF ACTION: AGAINST MAGIC TOUCH PRODUCTIONS,
KENT BARCLAY, GODADDY.COM, INTERCOSMOS
MEDIA GROUP, INC. D/B/A DIRECTNIC.COM,
BLOGSPOT.COM, GOOGLE.COM, BLOGGER.COM, PYRA.COM, LTD,
THEPLANET.COM, and COMPUTER TYME HOSTING**

166. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
167. Defendants named above had a duty to keep the aforementioned deliberately false content about Plaintiff off Defendant's websites and blogs, breached that duty,

and were, foreseeably (because of their failure to remove that defamatory content though they had the ability and control over the websites and blogs to do so), the direct and proximate cause of Plaintiff's injuries.

168. By reason of Defendants' actions, Plaintiff continues to suffer irreparable harm for which there is no adequate remedy at law.

**SEVENTH CAUSE OF ACTION: AGAINST MAGIC TOUCH PRODUCTIONS,
KENT BARCLAY, GODADDY.COM, INTERCOSMOS
MEDIA GROUP, INC. D/B/A DIRECTNIC.COM,
BLOGSPOT.COM, BLOGGER.COM, PYRA.COM, LTD, GOOGLE.COM, and
THEPLANET.COM**

169. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
170. Defendants, through the applicable written Terms of Service of each Defendant or of the entity governing the use each Defendant's web space, has promised and established a policy regarding the prohibition of abusive or harassing content on Defendants' respective websites and blogs.
171. Each and every Defendant has failed to abide by those policies and promises and each and every Defendant, but failing to abide thereto, has breached the policies and promises applicable to its web space.
172. By reason of these breaches, Plaintiff continues to suffer irreparable harm for which there is no adequate remedy at law.

EIGHTH CAUSE OF ACTION: AGAINST ALL DEFENDANTS

173. Plaintiff incorporates by reference, as if fully stated herein, all allegations contained in the paragraphs above.
174. Plaintiff will succeed on the merits of Plaintiff's case, but has no adequate remedy at law for the damage done by Defendants by posting or by permitting and hosting the continued hosting of the aforementioned deliberately false statements regarding Plaintiff.
175. If the aforementioned postings are not removed and if new postings continue to be made, Plaintiff will continue to suffer irreparable harm to his reputation, to his future employment and career prospects, and to his family.
176. A permanent injunction must be granted against all Defendants, especially Defendant David Starr, enjoining all Defendants from posting, hosting, or otherwise facilitating the future or continued posting of the aforementioned or

similar deliberately false statements, private information, or any other statements or information about Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for a Judgment of this Court and/or jury against Defendants as follows:

- A) On his first cause of action, Plaintiff **demands** judgment against Defendant David W. Starr in a sum not less than \$5,000,000, **together** with the costs and disbursements of this action;
- B) On his second cause of action, Plaintiff **demands** judgment against Defendant Kent Barclay in a sum not less than \$5,000,000, **together** with the costs and disbursements of this action;
- C) On his third cause of action, Plaintiff **demands** judgment against Defendant David W. Starr in a sum not less than \$5,000,000, **together** with the costs and disbursements of this action;
- D) On his fourth cause of action, Plaintiff **demands** judgment against Defendant David W. Starr in a sum not less than \$5,000,000, **together** with the equitable relief requested in Paragraph H) below, **and the** costs and disbursements of this action.
- E) On his fifth cause of action, Plaintiff **respectfully** requests that this Court grant, against each of the aforementioned Defendants, the equitable relief requested in Paragraph H) below, **and, the** costs and **disbursements** of this action;
- F) On his sixth cause of action, Plaintiff **respectfully** requests that this Court grant, against each of the aforementioned Defendants, the equitable relief requested in Paragraph H) below, **and, the** costs and **disbursements** of this action;
- G) On his seventh cause of action, Plaintiff **respectfully** requests that this Court grant, against each of the aforementioned Defendants, the equitable relief requested in Paragraph H) below, **and, the costs** and disbursements of this action;
- H) On his eighth cause of action, Plaintiff **respectfully** requests this Court grant a temporary restraining order and a permanent **injunction**, enjoining Defendants, especially Defendant David W. Starr, from **hosting**, posting, or otherwise facilitating the continued or future posting of the aforementioned or similar deliberately false statements, private or **personal** information, or anything else relating to Plaintiff and, also, ordering Defendants to remove any and all current postings about Plaintiff, **together with the costs** and disbursements of this action;
- I) On his fifth, sixth, seventh, and eighth causes of action, should this Court not grant Plaintiff's request for injunctive relief, Plaintiff respectfully requests this Court issue an order that Defendants remove **any** and all Internet postings found

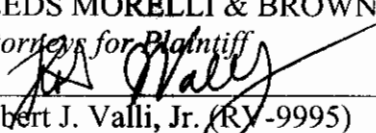
by the jury to be libelous and/or revealing of personal or private information; and

J) For such other and further relief as this Court deems just and proper.

Dated: Carle Place, New York
May 18, 2006

Respectfully submitted,
LEEDS MORELLI & BROWN, P.C.

Attorneys for Plaintiff


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